**UNITED STATES DISTRICT COURT**

**DISTRICT OF CONNECTICUT**

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| REPUBLIC CREDIT CORP. I, Plaintiff, | : |
| v. | : Civ. No. 3:99cv286(PCD) |
| Anthony D. AUTORINO, et al., Defendants. | : |

RULINGS ON DEFENDANT AUTORINO'S MOTION TO FILE UNDER SEAL AND MOTION FOR STAY OR FOR PROTECTIVE ORDER

Defendant moves to file under seal. The motion is denied. Defendant moves for a stay. The motion is denied. In the alternative, Defendant moves for a protective order. The motion is granted in part.

I. BACKGROUND

Defendant, Anthony D. Autorino, is a Hartford businessman. The suit against him arises out of an alleged failure to repay a promissory note to Plaintiff, Republic Credit Corporation.[1] Defendant is also alleged to have converted the collateral that secured the loan, namely, shares of stock in the company he owned.

II. MOTION TO FILE UNDER SEAL

Defendant moves for an order to file under seal an attached motion to stay or for a protective order and its accompanying memorandum of law. In those documents, he asserts that he is under a criminal investigation by the U.S. Attorney for fraud, misrepresentation, and conversion and that these claims center around the same facts as the present lawsuit. He asserts he is under immediate threat of indictment and that public

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[1] Republic Credit Corporation replaced the previous plaintiff, Federal Deposit Insurance Corporation, on August 21, 2000.

disclosure of this investigation "will promote public scandal." He also asserts that there is "little to no public interest in these facts as they currently exist." Accordingly, he argues that the damage to his "right to personal privacy" and to his personal and professional reputation outweigh any need to make the attached motion and memorandum open for public access.

Both the common law and the First Amendment protect the public's right of access to court documents. Nixon v. Warner Communications, Inc., 435 U.S. 589, 597-98 (1978). This right of access is not absolute, and "the decision as to access [to judicial records] is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case." Id. at 598-99. Defendant has the burden to overcome the presumption in favor of public access to the records of judicial proceedings. See United States v. Amodeo (In re Newsday, Inc.), 71 F.3d 1044, 1047 (2d Cir. 1995). "[T]he weight to be given the presumption of access must be governed by the role of the material at issue in the exercise of Article III judicial power and the resultant value of such information to those monitoring the federal courts." Id. at 1049. One countervailing factor to be balanced against the presumption is the privacy interest of the person resisting disclosure. Id. at 1050-51. This factor includes the degree to which the subject matter is traditionally considered private rather than public and the nature and degree of the injury that would be caused by disclosure. Id. at 1051.

Courts have the power to ensure that their records are not used to "promote public scandal." Id. Defendant seizes upon this to argue that public knowledge that he is under criminal investigation by the U.S. Attorney would "promote public scandal." Defendant,

however, pulls these words out of a larger context. In discussing a "public scandal," the Second Circuit was not so much referring to whether public access to the information would be a social burden on the movant as to whether it would "cater to a morbid craving for that which is sensational and impure," id. (quotation marks and citation omitted), and whether the court file would "serve as reservoirs of libelous statements for press consumption," id. (citation omitted).

"The possibility of 'adverse publicity' in and of itself does not justify sealing." Vassiliades v. Israely, 714 F. Supp. 604, 606 (D. Conn. 1989). "[A]dverse or otherwise unwanted publicity . . . is simply one of the costs attendant to . . . an action." See id. Defendant's failure to overcome the presumption is further reinforced where the details of the alleged criminal activity are already fully available through an inspection of the civil complaint in the present case and where the details of any ensuing criminal prosecution would themselves be available for public access.

III. MOTION TO STAY

Defendant moves to stay the proceedings until the U.S. Attorney's final determination in his criminal investigation.[2] He argues a stay is necessary to protect his right against self-incrimination under the Fifth Amendment.

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. North Am. Co., 299 U.S. 248, 254 (1936).

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[2] Defendant, in filing his motion, failed to comply with the Supplemental Order. Non-compliance is excused on this occasion.

Whether to stay civil proceedings pending the resolution of criminal matters is within the discretion of the trial court. See United States v. Kordel, 397 U.S. 1, 12 n.27 (1970); Kashi v. Gratsos, 790 F.2d 1050, 1057 (2d Cir. 1986) (it was within "sound discretion" of district court to grant a stay until U.S. Attorney declined to prosecute). A district court may weigh several factors: the timeliness of the motion; the extent to which the issues in the criminal case overlap with those presented in the civil case; the status of the criminal case, including whether the defendants have been indicted; the plaintiff's interest in proceeding expeditiously with the litigation as balanced against the prejudice to the plaintiff if delayed; the private interests of and burden on the defendant; the convenience to the courts; the interests of persons not parties to the litigation; and the public interest. See United States v. Certain Real Prop. & Premises Unknown as: 4003-4005 5th Ave., 55 F.3d 78, 84 (2d Cir. 1995) ("how and when the privilege was invoked"); Gala Enters., Inc. v. Hewlett Packard Co., 1996 WL 732636, at *2 (S.D.N.Y. Dec. 20, 1996); Arden Way Assocs. v. Boesky, 660 F. Supp. 1494, 1497 (S.D.N.Y. 1987).

Defendant asserts that the facts underlying the criminal investigation will be at the very center of questioning by Plaintiff's counsel and therefore the civil case against him should be stayed. The stay is denied. The above factors weigh against granting a stay.

First, the timing of the motion is late, coming over two years after Defendant was served and near the close of discovery.[3] Defendant offers no explanation or justification for this delay.

Second, in contrast to a grand jury indictment, Defendant merely asserts he is

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[3] Discovery is scheduled to be completed by June 8, 2001.

under a criminal investigation. A stay is not normally appropriate where an indictment has not been returned against the civil litigant. See United States v. Private Sanitation Indus. Ass'n, 811 F. Supp. 802, 805 (E.D.N.Y. 1992); see also United States v. Dist. Council of the United Bhd. of Carpenters, 782 F. Supp. 920, 925 (S.D.N.Y. 1992); Trs. of the Plumbers Nat'l Pension Fund v. Transworld Mech., Inc., 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995) ("stays will generally not be granted before an indictment is issued"). Even when under indictment, stays have nonetheless still been denied. See, e.g., Paine, Webber, Jackson & Curtis Inc. v. Malon S. Andrus, Inc., 486 F. Supp. 1118 (S.D.N.Y. 1980).

Third, the interests of Plaintiff are served by the expeditious resolution of this matter. This case comprises more than just Defendant's deposition. There is no meritorious reason why the entire rest of the case should be affected, as opposed to just his deposition. The Constitution "does not ordinarily require a stay of civil proceedings pending the outcome of [related] criminal proceedings." Kashi, 790 F.2d at 1057 (quotation marks and citation omitted). This is even more so when the case against Defendant has apparently proceeded for over two years without infringing his Fifth Amendment rights.

Fourth, the interests of the public, both financial and otherwise, are served by the expeditious resolution of this matter. Fifth, the interests of the court militate against the granting of the stay. Gala Enters., Inc., 1996 WL 732636, at *2 ("[t]he convenience of the courts is best served when motions to stay proceedings are discouraged") (quotation marks and citation omitted). Sixth and as an additional factor, it is not clear how long the

case would be stayed. Defendant asserts that because of expiring statutes of limitations, a decision by the U.S. Attorney "will be forthcoming shortly." No indication is made whether this means five weeks or five years.[4] Only the private interests of and burden on Defendant weigh against the granting of the stay.[5]

IV. MOTION FOR PROTECTIVE ORDER

In the alternative, Defendant moves for a protective order barring his deposition. He offers the same arguments as for a stay. The problem is that with deadline for the completion of discovery about a week away, it is unlikely that much other than his deposition remains. Also, given Defendant's alleged central role in the underlying financial dealings, it is unlikely that Plaintiff could proceed on to trial without this testimony. The net effect of barring his deposition would be the same as staying the whole case. For the same reasons as above, this is rejected.

Defendant's request for a protective order is granted but in a different form.[6] "[S]pecial consideration must be given to the plight of the party asserting the Fifth Amendment." Certain Real Prop., 55 F.3d at 83 (quoting SEC v. Graystone Nash, Inc.,

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4 Nor does Defendant note the criminal statutes at issue or their applicable statutes of limitation periods.

5 There is no assertion by either party of relevant interests of persons not parties to the litigation, so this factor plays no significant role. As to the extent to which the issues in the criminal case overlap with the those presented in the civil case, this factor also plays no significant role. As a preliminary matter, it would seem to be a factor that might only weigh against a stay, not in favor of one. PARALLEL CIVIL AND CRIMINAL PROCEEDINGS, 129 F.R.D. 201, 203 (1989); but see Trs. of the Plumbers Nat'l Pension Fund, 886 F. Supp. at 1139. Furthermore, if anything this factor would partially weigh against a stay as the issue of whether Defendant failed to repay a promissory note does not overlap with the potential criminal allegations arising from allegedly converting the collateral that secured the loan.

6 The protective order shall apply if and when the deposition is rescheduled.

25 F.3d 187, 194 (3d Cir. 1994)). "[T]he court should explore all possible measures in order to select the means which strikes a fair balance and accommodates both parties." Id. at 84 (quotation marks, internal ellipses, and citation omitted). Instead of a protective order barring the deposition altogether, this court grants a protective order barring the use of Defendant's deposition responses in any criminal proceeding. See SEC v. Dresser Indus., Inc., 628 F.2d 1368, 1376 (D.C. Cir. 1980) ("[i]n some . . . cases, . . . the courts may adequately protect . . . the private party by merely . . . entering an appropriate protective order"); see also FED. R. CIV. P. 26(c); see, e.g., United States v. Parcels of Land, 903 F.2d 36, 44 (1st Cir. 1990). The parties, counsel, and the court reporter are barred from discussing the contents of the deposition with anyone outside this civil litigation. The protective order may not apply to criminal proceedings for perjury, pending in camera review.

The protective order presumptively applies to the entire deposition. Upon appropriate motion by the U.S. Attorney, Defendant shall be required to put forward the portions of the deposition to which he does not assert his Fifth Amendment right. The protective order does not free Defendant from his obligation to support his assertion of Fifth Amendment privilege as to the remaining portions of the deposition with specific evidence if so challenged by the U.S. Attorney. See Certain Real Prop., 55 F.3d at 83 ("a litigant claiming the privilege is not freed from adducing proof of a burden which would otherwise be his") (quotation marks and citation omitted).

V. CONCLUSION

Defendant's motion to file under seal, (Dkt. No. 110), is **denied**. Defendant's motion for stay or for protective order, (Dkt. No. 112), is **denied in part** and **granted in part**.

SO ORDERED.

Dated at New Haven, Connecticut, June__, 2001.

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Peter C. Dorsey
Senior United States District Judge